

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JASON Q. LUCAS,

Plaintiff,

v.

WARDEN RALPH B. REISH, *et al.*,

Defendants.

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CIVIL NO. 4:09-CV-2031

(Judge McClure)

**MEMORANDUM**

August 9, 2010

**I. INTRODUCTION**

Plaintiff Jason Q. Lucas, a former inmate at the Northumberland County Prison in Sunbury, Pennsylvania, initiated the above civil rights action through counsel by filing a Complaint under the provisions of 42 U.S.C. § 1983. (Rec. Doc. No. 1.) Named as Defendants are Warden Ralph B. Reish, Deputy Warden John N. Conrad, Counselor Mary Jo Christiano, and a John Doe Correctional Officer. Service of the Complaint was directed by Order dated December 18, 2009. (Rec. Doc. No. 3.)

Motions to dismiss the Complaint have been filed on behalf of Defendants Christiano (Rec. Doc. No. 13), Reish (Rec. Doc. No. 21), and Conrad (Rec. Doc. No. 24). Plaintiff filed a brief in opposition to Christiano's motion on May 25, 2010.

(Rec. Doc. No. 17).

However, Plaintiff failed to file his opposition to Reish's and Conrad's motions by the original July 12, 2010 deadline. Therefore, by Order dated July 19, 2010, we directed Plaintiff to file his opposition to the motions on or before August 3, 2010 and warned him that his failure to do so would result in the motions being deemed unopposed and granted without a merits analysis. (*See* Rec. Doc. No. 27.) Although the extended deadline for filing his opposition has passed, Plaintiff neither has filed his opposition briefs nor requested an extension of time in which to do so.

On August 6, 2010, counsel for Defendant Reish filed a letter observing that the extended deadline for filing opposition to Defendant Reish's motion had passed and requesting that we grant his motion to dismiss as unopposed. (Rec. Doc. No. 28.)

For the reasons set forth below, Defendant Reish's and Defendant Conrad's motions will be deemed unopposed and granted without a merits analysis.

## **II. DISCUSSION**

In *Stackhouse v. Mazurkiewicz*, 951 F.2d 29, 30 (3d Cir. 1991), the United States Court of Appeals for the Third Circuit held that a motion to dismiss should not be granted simply because it is unopposed. Instead, the Court of Appeals specifically stated:

In reaching our result, we do not suggest that the district court may never rely on the local rule to treat a motion to dismiss as unopposed and subject to dismissal without a merits analysis. There may be some cases where failure of a party to oppose a motion will indicate that the motion is in fact not opposed, particularly if the party is represented by an attorney and in that situation the rule may be appropriately invoked. *Nor do we suggest that if a party fails to comply with the rule after a specific direction to comply from the court, the rule cannot be invoked.*

*Stackhouse*, 951 F.2d at 30 (emphasis added).

In this case, Plaintiff was advised of the requirements of Local Rule 7.6 in our July 19, 2010 Order directing him to file his opposition to the pending motions to dismiss on or before August 3, 2010. (*See* Rec. Doc. No. 27 at 2 ¶ 2.) He specifically was notified that his failure to comply with Local Rule 7.6 by timely filing his opposition briefs would result in the motions to dismiss being granted without a merits analysis. Consequently, the Court will grant the unopposed motions to dismiss filed on behalf of Defendants Reish and Conrad without a merits analysis, dismiss the claims against them, and dismiss them as parties to this action. *See* M.D. Pa. Local Rule 7.6; *Stackhouse*, 951 F.2d at 30 (3d Cir. 1991). An appropriate Order follows.

s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge

1. The unopposed motion to dismiss filed on behalf of Defendant Reish (Rec. Doc. No. 21) is **GRANTED**.
2. The unopposed motion to dismiss filed on behalf of Defendant Conrad (Rec. Doc. No. 24) is **GRANTED**.
3. The claims against Defendants Reish and Conrad asserted in the Complaint (Rec. Doc. No. 1) are **DISMISSED**, and Defendants Reish and Conrad are

**DISMISSED** as parties to this action.

s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge